

PUGET SOUND AIR POLLUTION CONTROL AGENCY
KING COUNTY ▲ KITSAP COUNTY ▲ PIERCE COUNTY ▲ SNOHOMISH COUNTY

December 1, 1995

Certified Mail No. Z 035 473 468

Ash Grove Cement Company
c/o Gerald J. Brown
Manager, Safety and Environment
3801 East Marginal Way South
Seattle, WA 98134-1147

RECEIVED

DEC 5 1995

AGCW-SEATTLE

Dear Mr. Brown:

Ash Grove Cement Company
Notice of Disposition on Application for Relief
Notice and Order of Civil Penalty No. 8267

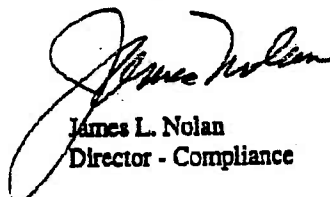
Reference is made to your Application for Remission or Mitigation that this Agency received on November 20, 1995.

Your application has been reviewed and the Agency finds that there is a lack of demonstration of extraordinary circumstances such as the presence of information or factors not considered in setting Notice and Order of Civil Penalty No. 8267. Specifically, Puget Sound Air Pollution Control Agency (PSAPCA) has determined that there is a direct correlation between the Ash Grove Cement Co. clinker and the fallout that we have collected at 48 S. Nevada St. We therefore do not accept the grounds upon which you view the Civil Penalty to be unjust.

This letter serves as notification that this Agency will not accede to remitting or mitigating Notice and Order of Civil Penalty No. 8267 further. In accordance with RCW 43.21B.300 and 70.94.431, thirty (30) days after your receipt of this Notice of Disposition on Application for Relief from Penalty, the Civil Penalty becomes due and payable in the full amount of \$5,000 unless appealed to the Washington State Pollution Control Hearings Board (PCHB), with a copy of such appeal being presented to this Agency, within the aforementioned thirty (30) day period.

Enclosed is a brochure, published by the PCHB, that is an informal guide to your rights and responsibilities in an appeal. We trust that we can depend upon your cooperation in this matter.

Sincerely,


James L. Nolan
Director - Compliance

JLN:kes

Enclosure

cc: Laurie Halvorson, Agency Counsel
Accounting

Dennis J. McLerran, Air Pollution Control Officer

B O A R D O F D I R E C T O R S

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110 Union Street, Suite 500, Seattle, Washington 98101-2038 ▲ (206) 343-8800 ▲ (800) 552-3565 ▲ FAX: (206) 343-7522
printed on recycled paper

AGCS2M001406

PUGET SOUND AIR POLLUTION CONTROL AGENCY)
a municipal corporation of the state of Washington)
110 Union Street, Suite 500)
Seattle, Washington 98101-2038)

VS

ASH GROVE CEMENT COMPANY)
c/o Edwin S. Pierce, Registered Agent)
3801 East Marginal Way South)
Seattle, Washington 98134-1147)

RECEIVED

OCT 31 1995

NO. 8267

AGCW-SEATTLE

**NOTICE AND ORDER
OF CIVIL PENALTY**

You are hereby notified that, pursuant to RCW 70.94, you have violated Regulation I of the Puget Sound Air Pollution Control Agency and a penalty of \$5,000.00 is assessed against you. The violation is as follows:

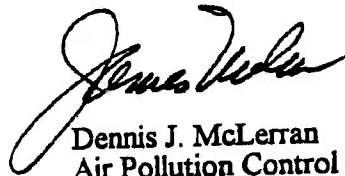
On or about the 15th day of May 1995, in King County, state of Washington, you violated Section 9.11(a) of Regulation I. Section 9.11(a) states: "It shall be unlawful for any person to cause or allow the emission of any air contaminant in sufficient quantities and of such characteristics and duration as is, or is likely to be, injurious to human health, plant or animal life, or property, or which unreasonably interferes with enjoyment of life and property."

<u>Time</u>	<u>Description</u>	<u>N/V #</u>
4:15 p.m.	Caused or allowed the fallout of cement clinker on the vehicles of Hasbro Inc. employees, which was detrimental to persons or property, from 3801 East Marginal Way South in Seattle, Washington.	33673

Such penalty is due and payable within thirty (30) days of receipt of this notice, unless within such time a request for hearing is filed. (See reverse side for mitigation or appeal procedures.)

If such penalty is not paid on or before the last mentioned date, or a request for mitigation has not been made to this Agency, or a request for hearing has not been made to the Pollution Control Hearings Board of Washington and the Air Pollution Control Officer, action will be commenced in court to recover such penalty.

Dated this 30th day of October 1995.


Dennis J. McLerran
Air Pollution Control Officer

Certified Mail No. Z 704 779 185

AGCS2M001407

STATE OF WASHINGTON
BEFORE THE POLLUTION CONTROL HEARINGS BOARD

ASH GROVE CEMENT COMPANY)
)
Appellant,) PCHB No. _____
)
v.) NOTICE OF APPEAL
)
PUGET SOUND AIR POLLUTION CONTROL)
AUTHORITY)
)
Respondent.)
_____)

Notice is hereby given that Ash Grove Cement Company ("Ash Grove") appeals to the Pollution Control Hearings Board for review of Notice of Disposition on Application for Relief from Notice and Order of Civil Penalty No. 8267, issued by the Puget Sound Air Pollution Control Agency ("PSAPCA") on December 1, 1995. In support of its appeal Ash Grove states as follows:

A. Communications regarding this appeal shall be addressed to:

Mr. Gerald J. Brown
Safety/Environmental Manager
Ash Grove Cement Company
3801 E. Marginal Way South
Seattle, WA 98134
Tel. (206) 623-5596
Fax (206) 623-5355

Mr. Matthew Cohen
Mr. Svend Brandt-Erichsen
Heller, Ehrman, White & McAuliffe
6100 Columbia Center
701 Fifth Avenue
Seattle, WA 98104
Tel. (206) 447-0900
Fax (206) 447-0849

NOTICE OF APPEAL - 1

AGCS2M001408

HELLER EHRMAN WHITE & MCAULIFFE
ATTORNEYS
6100 COLUMBIA CENTER
701 FIFTH AVENUE
SEATTLE, WASHINGTON 98104-7098
TELEPHONE (206) 447-0900

1 B. By notice dated October 30, 1995, PSAPCA assessed a
2 \$5,000 penalty against Ash Grove for allegedly causing or allowing
3 cement clinker particles emitted from its plant to be deposited on
4 a vehicle or vehicles parked near 48 South Nevada Street. The
5 notice alleged that such deposition was detrimental to persons or
6 property and in violation of PSAPCA Regulation I, Section 9.11(a)
7 on May 15, 1995.

8 C. Ash Grove owns and operates a Portland cement plant at
9 3801 E. Marginal Way South in Seattle's Duwamish industrial area.

10 D. A large warehouse is located between Ash Grove's plant
11 and the vehicles in question. 48 South Nevada Street is the
12 address of one of the tenants of this warehouse.

13 E. On May 15, 1995, PSAPCA inspectors collected a
14 particulate sample from the exterior of a vehicle or vehicles
15 parked at or near 48 South Nevada Street. This sample forms the
16 basis for the violation alleged against Ash Grove.

17 F. Ash Grove denies liability for the violation described
18 in Notice and Order of Civil Penalty No. 8267. In particular:

19 1. Ash Grove denies that its emissions caused the
20 fallout of particulate matter on the subject vehicles on May
21 15, 1995.

22 2. Ash Grove denies that emissions from its plant on
23 May 15, 1995 were of sufficient quantity, characteristics or
24 duration as to injure or unreasonably interfere with the
25 enjoyment of any neighboring properties, in violation of
26 Regulation I, Section 9.11(a).

1 3. The requirements of Regulation I, Section 9.11(b)
2 were not met prior to issuance of Notice of Violation No.
3 33673, which provided the basis for Penalty No. 8267.

4 G. The relief requested by Ash Grove consists of an order
5 dismissing with prejudice Notice and Order of Civil Penalty No.
6 8267, and awarding Ash Grove its costs and attorneys fees incurred
7 in bringing this appeal.

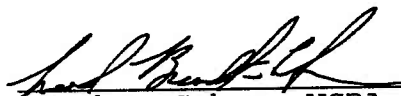
8 H. Copies of PSAPCA's Notice and Order of Civil Penalty No.
9 8267 and PSAPCA's Notice of Disposition on Application for Relief
10 from Penalty No. 8267 are attached to this Notice of Appeal.

11
12 The undersigned counsel for Ash Grove has read this notice,
13 and believes the contents to be true.

14
15 DATED this 4th day of January, 1996.

16 Respectfully submitted,

17 HELLER, EHRMAN, WHITE & MCAULIFFE

18
19 By: 
20 Matthew Cohen, WSBA #11232
 Svend Brandt-Erichsen, WSBA #23923

21 Attorneys for Appellant
22 Ash Grove Cement Company

23 I:\SXB\14362-05\PL.001